IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL APPLICATION NO. 2897 OF 2006

ALONGWITH

CIVIL APPLICATION NO. 2898 OF 2006

IN

WRIT PETITION NO. 1493 OF 1993

SMT. SUKANYA J. VAKIL ... APPLICANT.

VS.

DR. RASIKLAL D. DALAL

& ORS. ... RESPONDENTS.

MR. S.I.KAZI I/B. MR. V.M. PARKAR FOR APPLICANT.

MR.N.M.GANGULI FOR RESPONDENT NO.1.

MR. S.K.CHINCHALIKAR AGP FOR RESPONDENT NO.3.

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CORAM : A.P. DESHPANDE, J.

DATE : January 18, 2007.

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P.C.

1. Civil application No.2897 of 2006 and 2898 of 2006 are filed , seeking condonation of delay of 639 days in filing an application for setting aside the Order of dismissal of the Writ Petition in default and for restoration of the Writ Petition to file.

2. Perusal of the application for setting aside the impugned Order, reveals the contention of the present applicant / original petitioner that initially

the petitioner had engaged services of one advocate by name Bharat Zaveri. That advocate had appeared at the stage of admission whereas, at a latter point of time, the papers were returned by the said advocate and, hence, the petitioner engaged another advocate, by name B.R.Chinchkar. The said advocate was also paid the fees and also was handed over Vakalatnama, duly signed by the petitioner with no objection from the earlier advocate. However, the said advocate did not file his Vakalatnama and when the matter was listed before the Court on 19.1.2005. On that day, on behalf of advocate Zaveri, a statement was made that he had returned the papers to the client and as Advocate Chinchkar had not filed his Vakalatnama, his name did not appear on the board and he did not remain present, resulting in dismissal of the petition in default.

3. The learned Counsel for the Petitioner/ applicant submits that because of the fault on the part of the advocate, the party ought not be made to suffer, hence, seek condonation of delay and restoration of the petition to file.

4. Per contra, the learned Counsel appearing for the Respondent submits that the petition is of the year 1993, which has been dismissed in January, 2005 and the respondent is unduly denied the benefits granted to him under the Order passed by the School Tribunal. In the alternative, the learned Counsel for the respondent claims heavy costs.

5. In my view, ends of justice would be met by

restoring the petition, subject to payment of costs.

6. In the result, the Civil Applications are allowed subject to payment of total cost of Rs.10,000/- (Rupees ten thousand only) by the applicant/ petitioner to the respondent No.1, which shall be paid within four weeks from today.

7. Civil applications stand disposed of accordingly.

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[A.P.DESHPANDE, J.]